



Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

07/508840

SERIAL NUMBER 07/508,840	FILING DATE 04/12/90	FIRST NAMED INVENTOR THOMAS J. WALL	ATTORNEY DOCKET NO. 438P3195
-----------------------------	-------------------------	--	---------------------------------

THOMAS J. WALL
WALL AND ROHRIG
710 HILLS BUILDING
SYRACUSE, NY 13202

EXAMINER KUBEL, P

ART UNIT 332	PAPER NUMBER 3
-----------------	-------------------

DATE MAILED: 08/01/90

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-26 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-26 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____ Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other _____

183

Serial No. 07/508840

-2-

Art Unit 332

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14,16,19,20,22,23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Diethelm. As to claim 1, Diethelm teaches applicants method of changing the "electrical field state of cells" by applying electric current. As to claims 2,5 and 18 Diethelm's method includes applying electric current about the affected area.

As to claims 3,6,16,22 {See page 4 lines 5-8} describing treatment method. As to claims 4,7,8, the method disclosed by Diethelm includes changing the treated virus and human body. As to claim 9, Diethelm applies a low voltage electrical field to the human body using two electrodes. As to claims 10,23, Diethelm's method discloses electrode placement at approximately one and one half inches (see figure 3). As to claim 11, Diethelm's device includes 8 NiCd batteries of 1.2 V and 600 ma. As to claim 12; see above -refer to claims 2 and 3. As to claims 13 and 19, Diethelm's device includes a DC voltage. As to claims 14,20, it would be obvious to any one with ordinary skill in the art, to

184

Art Unit 332

apply Diethelm's device at the onset of symptoms.

Claims 24-26 are rejected under 35 U.S.C. § 102(b) as being anticipated by Clarke. As to claim 24, note Clarke's housing, battery and pair of probes. As to claim 25, Clarke's claimed battery could be 9v. As to claim 26, it would be obvious to anyone with ordinary skill in the art to include a 330 ohm resistor.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 15,17,18,21 are rejected under 35 U.S.C. § 103 as being unpatentable over Diethelm in view of Swartz. Diethelm's treatment method does not disclose a short duration time. Swartz's describes examples which indicate a duration time of 3-20 seconds. The adaption of a short duration time would have been obvious to a person having ordinary skill in the art in order to improve the

185

Serial No. 07/508840

-4-

Art Unit 332

healing process.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Grauvogel -Note polarizing effect due to current direction

Fuxue

-Note electrodes

Tapper, Kairis and Sybron

-Note Dc circuits

Any inquiry concerning this communication should be directed to Mr. P. Kubel at telephone number (703) 557-3125.



Mr. P. Kubel
July 27, 1990

V. Millin
V. Millin
Primary Examiner

186